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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 24th April 2007

No.3850-1i/1(S)-13/2004(Pt.)/LE. —In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 28th November, 2006 in I.D. Case No. 9/ 2005 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial disputes between the Management of Sambalpur Development Authority, Sambalpur and its workman Miss. Sabitri Mirdha, D/o. late Govinda Mirdha, At/P.O.-Bhutapada, District-Sambalpur was referred for adjudication is hereby published as in the schedule below:—

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER: LABOUR COURT: SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 9 of 2005

Dated, the 28th November, 2006.

Present:

Shri P. K. Mohapatra, L.L.B.,
Presiding Officer,
Labour Court,
Sambalpur.

Between:

The Management of
Sambalpur Development Authority,
Dist: Sambalpur

... First-Party —Management.

AND

Its Workman
Miss. Sabitri Mirdha,
D/o. Late Govind Mirdha,
At/P.O.- Bhutapada,
Dist: Sambalpur.

... Second-Party — Workman.

Appearances :

For the First-Party Management.

... Shri B. M. Guru, Advocate.

For the Second-Pary Workman.

... Shri R. K. Mohanty, Advocate.

AWARD

1. This case arises out of the reference made by the Government of Orissa, Labour and Employment Department U/s. 10 & 12 of the Industrial Disputes Act, 1947 vide Memo No. 6254(5), dated the 23rd July 2005 for adjudication of the disputes scheduled below:—

“ Whether the termination of service of Miss. Sabitri Mirdha by way of refusal of employment with effect from 1st November 1995 by the Management of Sambalpur Development Authority, Sambalpur is legal and/or justified ? If not, to what relief she is entitled ?”

2. Miss. Sabitri Mirdha (here-in-after referred as the ‘workman’) has moved this Court to declare her retrenchment with effect from 1st November 1995 as illegal and void and to reinstate her in service with full back wages and other service benefits with the facts that she was employed under the Management since 13th April 1994 and then she performed her duties to the entire satisfaction of her superiors, but on 1st November 1995 the Management all of a sudden without assigning any reason refused her to perform duty with amounts to retrenchment and as the said illegal action was taken up by the Management without compliance of the statutory requirements, so she may be allowed to enjoy the benefits as prayed for in her statement of claim, as because the Management is an Industry within the definition of section-2 (j) of the I.D. Act and her services under the Management since 13th April 1994 was continuous as visualised under the said Act and the Management failed to perform the principle of ‘first come last go’ and ‘last come first go’ as recognised under the said Act. It is also the case of the workman that after her retrenchment she has moved the officers of the Labour Department and after due investigation, a failure report was presented by the conciliation officer and then the Government referred the dispute to this Court for adjudication. The workman has prayed for the following reliefs in her statement of claim:—

- (i) That her retrenchment with effect from 1st November 1995 be declared as illegal and void *ab-initio*.
- (ii) That Miss. Mirdha may be reinstated in her job forthwith.
- (iii) That the back wages from the date of illegal termination of service i.e. 1st November 1995 till the date of order of the Hon’ble Court may be ordered to be paid to Miss. Sabitri Mirdha by the 1st Party.
- (iv) That any other relief which this Hon’ble Court may deem fit and proper in favour of Miss. Mirdha including expenses of the prosecution of the case and be awarded with cost for mental agony, harassment, anxiety, suffering and also unnecessary to drag for litigation.

4. The Management side has contested the above claim by stating that the workman was not appointed by it and she was not also terminated at any point of time. In Para-2 of the written statement it is specifically averred by the Management that she was working as a D.L.R. under the erstwhile Sambalpur Regional Improvement Trust (here-in-after referred as the ‘Improvement Trust’) and she was not employed regularly, but was being paid daily wages @ Rs. 25/- per day on the day when she was employed and as the Orissa Improvement

Trust Act was repealed and the O.D.A. Act came into force, so the Sambalpur Development Authority was constituted w.e.f. 2nd September 1995 with a small portion of the erstwhile Improvement Trust and after the reduction of the size of the Authority there was every reason for it to reduce the staff strength, as a result, a number of D.L.R.s. who were working under the Improvement Trust were not given further work from 1st November 1995. In Para-3 of the written statement there is a clear out mention that there was never any retrenchment or illegal refusal of job by the Management and it occurred due to the dissolution of the Improvement Trust. It is also the case of the Management that Sambalpur Development Authority (here-in-after referred as 'Development Authority') is not an 'Industry' as per the Industrial Disputes Act and as she was working under the Improvement Trust, so she cannot be treated as a 'Workman' under the present Management. The Management side has also claimed that her services are not continuous one and at no point of time she was retrenched by the Management, as a result, there is no reason to observe the procedures enumerated in the Act while retrenching a 'Workman'. By mentioning the above facts and circumstances, the Management has prayed for answering the issues against the workman.

5. After filing of the written statement, the workman has filed a rejoinder. In it, she has stated that the Management is an 'Industry' and the services of the workman is continuous as recognised under the Act. It is also stated by the workman in her rejoinder that Sambalpur Development Authority is a Governmental Organisation and it is formed after the abolition of the Improvement Trust and the present claim of the Management that it has no connection with the acts of omissions and commissions of the Improvement Trust cannot be easily swallowed. So in her rejoinder the workman has reiterated her claim available in the statement of claim.

6. By taking the note of the pleadings of the parties the following issues have been settled in the case.

ISSUES

- (i) " Whether there was any employer and employee relationship between the present Management and the workman or not ?
- (ii) Whether the Sambalpur Development Authority is an Industry within the definition of Section-2(j) of the Industrial Disputes Act, 1947 or not ?
- (iii) Whether the termination of services of the workman by way of refusal of employment with effect from 1st November 1995 by the Management of Sambalpur Development Authority, Sambalpur is legal and/or justified ?
- (iv) If not, to what relief she is entitled to get ?"

7. The workman is examined as only witness from her side and she has also proved the E.P.F. Account Slips (Ext. A to A/2) and the Service Certificate Ext. B. The Management side has examined Aswini Kumar Patel, the Section Officer of the Development Authority as their only witness.

FINDINGS

8. Issue No. ii :- At the outset the above issue is taken up as because it affects the root of the matter. In the written statement, the Management side has raised a plea that the Development Authority is not an 'Industry' as per the definition given under the Industrial Disputes Act. It is a well settled law that the word 'Industry' in the Act is given an exhaustive meaning and all governmental Organisation who are exercising certain functions of the Government for public purposes can be treated as 'Industry' within the sweep of the I.D. Act. In the case at hand it is forthcoming from the record that Sambalpur Development Authority is discharging a part of the affairs of the Government in the area earmarked for it. So it can be said that it is a public office to perform Governmental functions within a specified area. As such it can be safely said that it is an 'Industry' within the meaning of the I.D. Act. While examining the Section Officer as M.W.1 there is no whisper of word in the examination in chief touching the above aspect. The memory of M.W.1 has failed him to speak about this aspect, though the same is available in the body of the written statement. It may be pertinent to mention here that the plea furnished by the Management in the Written Statement cannot be treated as evidence. There should be positive evidence challenging the above aspect. In absence of the same, the plea taken by the Management that the Sambalpur Development Authority is not an 'Industry' within the sweep of the I.D. Act cannot be accepted. To sum up it can be safely said that it is an 'Industry' within the length and breadth of the Industrial Disputes Act. The above issue is answered accordingly.

9. Issue Nos. i, iii & iv :- The above issues are taken up together as those are interlinked. It is the specific stand of the Management that after the abolition of Orissa Improvement Trust Act and constitution of O.D.A. Act, the size of the present Management was shortened, as a result, the staff strength was also reduced. In Para-3 of the written statement it is averred by the Management that the D.L. Rs. who were working under the Improvement Trust were not given accommodation under the Development Authority from 1st November 1995 and the said action of the Management cannot be treated as retrenchment or illegal refusal of job. In his evidence M.W.1 has stated that the workman was never appointed by the Management and she too was also not removed by it. In this connection Section 25FF of the Industrial Disputes Act is highly relevant. Under the said Provision when the ownership or the Management of an undertaking is transferred, whether by agreement or by operation of law from the employer in relation to that undertaking to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation in accordance with the provisions of Section-25F, as if the workman had been retrenched. The first and foremost condition for the application of Section-25FF is that the ownership or Management of the undertaking is transferred from the employer in relation to that undertaking to a new employer. It is immaterial if the transfer is affected by virtue of any operation of law or by any agreement. In this case it is the specific evidence of M.W.1 in cross-examination Para-9 that the entire liability and assets of Sambalpur Regional Improvement Trust pertaining to three to was were transferred to Sambalpur Development Authority by virtue of the order of the Urban Development Department of

Government of Orissa. He has also stated that at the time of such transfer of assets and liabilities to Sambalpur Development Authority, there was no written authority issued by the Government pertaining to the retrenchment of the employees of Sambalpur Regional Improvement Trust. By taking note of the above evidence of M.W.1 it can be safely said that the ownership of the Management of Sambalpur Regional Improvement Trust was transferred to Sambalpur Development Authority and after the formation of Sambalpur Development Authority, it became the new employer of the employees of the erstwhile Sambalpur Regional Improvement Trust. So, if it is found that the workman was an employee under the Sambalpur Regional Improvement Trust, then as per the Provision of the above section of the I.D. Act, her rights would be safeguarded.

10. It is the admitted case of the parties that the workman was working as a D.L.R. and from 1st November 1995 no further employment was given to her. In his evidence, M.W.1 has admitted that she was working as D.L.R. from 15th April 1994 and she worked as such up till 1st November 1995. He has also admitted that no retrenchment compensation was given to her when employment was refused to her from 1st November 1995. As per law, no workman employed in any 'Industry' who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until the conditions enumerated in it are specified. Admittedly the workman was in service under the Improvement Trust from 15th April 1994 up till 1st November 1995. To justify her claim, the workman has filed Exts. A series and a certificate issued by the secretary of the Development Authority. On perusal of the Ext. B it is forthcoming that she was serving as D.L.R. with effect from 13th April 1994 to 31st October 1995 and she was discharging her duties satisfactorily and smoothly. As to whether the workman was in continuous service for not less than one year under the employer or not, it is for her (workman) to show by adducing relevant evidence. So the workman has to show that she had served not less than 240 days during the period of 12 months for maintaining that the Provision of Section-25F were attracted in her favour. As per the settled position of law to prove that an employee has completed one year of completed service in any 'Industry', he must show that he was employed for a period of not less than 12 calendar months and next that during those 12 calendar months, he had worked for not less than 240 days. The workman in her evidence has stated that she was in continuous service from 13th April 1994 uptill 30th October 1995. She has filed Ext.A series and Ext. B to buttress her claim. M.W.2 has also supported her view. So it is very clear that she was in service for not less than 240 days during the 12 calendar months she had worked under the Regional Improvement Trust. In view of her above status it is incumbent on the part of the Management to comply the requirements of Section 25-F of the I.D. Act. But from the evidence of M.W. 1 it is forthcoming that those were not complied. so it can be safely said that the mandatory requirments of Section 25-F were not complied, as a result, the retrenchment can be treated as illegal and void.

11. Now it is to be decided as to what would be the follow up order in consequence to my above conclusion. As per law, when the retrenchment is held to be invalid then the workman will be entitled to reinstatement with continuity of service and back wages. It can be judicially noted that from 1st November 1995 the workman has not worked under the Management and such a situation because of the lapses of the Management. But the fact remains that she has not performed any work during the above period and if she is allowed to be reinstated in service with full back wages, then the possibility of causing prejudice to the Management cannot be ruled out. After weighing the entire situation, I am of opinion that she is entitled to get 50% of the entire benefits accrued in her favour and the Management is directed to pay the same within two months hence. The above issues are answered accordingly. Hence the following award:—

AWARD

The reference is answered in favour of workman and against the Management. The termination of service of Miss. Sabitri Mirdha by way of refusal of employment with effect from 1st November 1995 by the Management of Sambalpur Development Authority, Sambalpur is held to be illegal and unjustified. The Management is directed to reinstate the workman in service and pay to her 50% of back wages within two months.

Dictated and corrected by me.

Shri P. K. Mohapatra,
Dt.28-11-2007
Presiding Officer,
Labour Court,
Sambalpur.

Shri P. K. Mohapatra,
Dt.28-11-2007
Presiding Officer,
Labour Court,
Sambalpur.

By order of the Governor

N. C. RAY
Under-Secretary to Government